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Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YEHUDAH KATZ,
on behalf of himself and all
others similarly situated,

Plaintiff,

v.

CAPITAL ONE BANK (USA), NA,

Defendant.

No. 12-CIV-1085

ECF Case

**AFFIDAVIT OF JUAN DIAZ IN
SUPPORT OF DEFENDANT
CAPITAL ONE BANK (USA),
NA'S MOTION FOR
SUMMARY JUDGMENT**

I, JUAN DIAZ, hereby state the following:

1. I am manager of the Capital One, N.A. branch located 520 8th Avenue, New York, New York. ATM Terminal Numbers E207 and E208 (hereinafter referred to as the "subject ATMs") are located outside of the branch. In my capacity as branch manager, I am familiar with the Electronic Fund Transfer Act ("EFTA"), and also with and have reviewed Capital One, N.A. policies and procedures regarding the EFTA.

2. I make this affidavit in support of Defendant Capital One Bank (USA), NA's Motion for Summary Judgment. I have personal knowledge of the facts stated herein, and they are all true and correct, and, if called as a witness, could and would testify competently to the matters stated herein.

3. In mid- to late February, 2012, I was contacted by Stephanie Estes, a manager in Capital One, N.A.'s Project Management Group, and asked to determine whether the external fee notices were missing from the subject ATMs.

4. On February 23, 2012, I provided confirmation to Ms. Estes that the external fee notices were missing from the subject ATMs.

5. I thereafter received two new external fee notices via Federal Express and, on February 27, 2012, posted those notices on the inner left-hand side of the subject ATMs.

6. I reported to Ms. Estes that the notices had been replaced that same day.

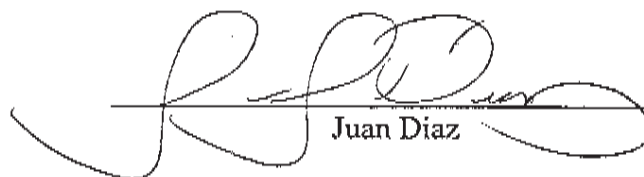
7. Attached hereto as Exhibit A are true and correct copies of the photographs I took on February 27, 2012, showing that the external fee notices had been replaced on the subject ATMs.

8. Thereafter, I was asked by Ms. Estes to determine whether any branch employees may have removed the external fee notices.

9. After inquiry and investigation, I concluded that no branch employee removed the external fee notices from the subject ATMs. I also did not remove the external fee notices on the subject ATMs.

10. It has been my experience as branch manager that third parties occasionally attempt to remove the external fee notices on the ATMs. For instance, I recently witnessed a third party attempting to remove the external fee notice on one of the subject ATMs.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct. Executed this 3 day of July, 2012 in NEW YORK, NY.



Juan Diaz